

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #11	CCRB Case #: 201601314	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/13/2016 11:30 PM	Location of Incident: 26 Bruckner Boulevard	Precinct: 40	18 Mo. SOL 8/13/2017	EO SOL 8/13/2017	
Date/Time CV Reported Sun, 02/14/2016 4:10 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 02/14/2016 4:10 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Manuel Gutierrez	15714	948589	040 PCT
2. POM Christian Garcia	29345	954847	040 PCT
3. An officer			040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Brittany Moore	11846	958948	040 PCT
2. POF Angie Rodriguez	20746	959139	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christian Garcia	Abuse: PO Christian Garcia frisked § 87(2)(b)	
B.POM Manuel Gutierrez	Force: PO Manuel Gutierrez used pepper spray against § 87(2)(b)	
C.POM Christian Garcia	Force: PO Christian Garcia used physical force against § 87(2)(b)	
D.POM Manuel Gutierrez	Force: PO Manuel Gutierrez used physical force against § 87(2)(b)	
E. An officer	Force: An officer used a chokehold against § 87(2)(b)	
F. An officer	Force: An officer restricted § 87(2)(b) s breathing.	
G.POM Christian Garcia	Force: PO Christian Garcia restricted § 87(2)(b) s breathing.	
H.POM Manuel Gutierrez	Force: PO Manuel Gutierrez restricted § 87(2)(b) s breathing.	

### Case Summary

On February 13, 2016, at approximately 11:30 p.m., in front of Club Miami, located at 26 Bruckner Boulevard in the Bronx, a taxi driver called 911 to report that § 87(2)(b) had not paid his fare. Officers Manuel Gutierrez, Christian Garcia, Angie Rodriguez, and Brittany Moore of the 40<sup>th</sup> Precinct responded to the scene. Security staff at Club Miami brought § 87(2)(b) out of the club, and § 87(2)(b) discussed the taxi fare with the officers. PO Garcia frisked § 87(2)(b) (**Allegation A**). § 87(2)(b) was startled, and he pushed PO Garcia's hand away from his body. Immediately after, PO Gutierrez pepper sprayed him (**Allegation B**). PO Garcia and PO Gutierrez allegedly brought § 87(2)(b) to the ground (**Allegations C and D**). An officer allegedly placed a knee on the back of § 87(2)(b)'s neck, and § 87(2)(b) could not breathe (**Allegations E and F**). PO Garcia and PO Gutierrez allegedly punched him to get him to go inside of the police vehicle (subsumed in **Allegations C and D**). § 87(2)(b) who could not see due to the pepper spray, was allegedly placed stomach-down across the back seat of the vehicle (**Allegations G and H**). § 87(2)(b) was arrested and charged with § 87(2)(b) § 87(2)(g).

There is no video footage in this case.

This case was closed beyond the 90-day deadline because of officer scheduling issues.

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On May 11, 2016, the New York City Comptroller's Office stated that no Notice of Claim had been filed in regard to this incident (Board Review 11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- § 87(2)(b)'s mother, § 87(2)(b) filed this complaint, although she was not present for the incident. This is her fifth CCRB case (Board Review 12).
- This is the first CCRB case involving § 87(2)(b) (Board Review 13).
- PO Manuel Gutierrez has been a member of service for five years. There have been nine allegations in three cases against him. In case number 201400407, a physical force allegation against him was substantiated; Command Discipline B was recommended by the CCRB and the NYPD, and Command Discipline B was ultimately imposed. At the time of this writing, case number 201600854 is awaiting review by Board Panel 4B.
- PO Christian Garcia has been a member of service for two years. There have been ten allegations in three cases against him. In case number 201501831, two physical force allegations against him were unsubstantiated. There are no substantiations and § 87(2)(g)

### Potential Issues

- The two witnesses who allegedly saw what occurred to § 87(2)(b) outside of the club, § 87(2)(b) and § 87(2)(b) did not cooperate with the investigation or provide the photos and videos that they allegedly possessed (Board Review 9). On March

9, 2016, § 87(2)(b) another individual who was at Club Miami, was called, and he stated that he did not witness the interaction between § 87(2)(b) and the officers (Board Review 28). The bouncer outside of the club could not be identified because attempts to identify the bouncer through § 87(2)(b), the owner of Club Miami, were unsuccessful (Board Review 29).

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED] None of the officers interviewed acknowledged placing a knee on the back of his neck or seeing another officer placing a knee on the back of his neck (Board Reviews 5-8).

### **Allegations not pleaded**

- § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Allegation A –Abuse of Authority: PO Christian Garcia frisked § 87(2)(b)**

### **Allegation B –Force: PO Manuel Gutierrez used pepper spray against § 87(2)(b)**

It is undisputed that officers were called to the scene because § 87(2)(b) had a dispute with a taxi driver and refused to pay the fare. It is also undisputed that PO Garcia frisked § 87(2)(b) § 87(2)(b) pushed PO Garcia's hand away, and PO Gutierrez pepper-sprayed § 87(2)(b)

§ 87(2)(b) stated that he, his girlfriend § 87(2)(b) her friend, known as § 87(2)(b) and his business partners, § 87(2)(b) and § 87(2)(b) took a taxi to Club Miami at 26 Bruckner Boulevard in the Bronx. The driver had gotten lost, and § 87(2)(b) felt the driver was over-charging them. He offered half the fare, which the driver refused to take. § 87(2)(b) and his friends entered the club, and within five minutes, a bouncer asked him to come outside. § 87(2)(b) was wearing a soft cast with a sling on his right hand due to a prior injury; because he was taking painkillers, he was not consuming alcohol that evening.

§ 87(2)(b) walked toward the exit of the club, and he saw four or five uniformed officers standing at the entrance. § 87(2)(b) walked approximately ten yards to the right of the door, and the officers stood next to him. PO Garcia asked § 87(2)(b) what had happened, and § 87(2)(b) began to explain that the taxi driver had overcharged him. The officers told § 87(2)(b) that the driver had told them that § 87(2)(b) had left the taxi without paying. PO Garcia started to pat down the left side of § 87(2)(b)'s waistband, where his jeans met his jacket. PO Garcia had not told § 87(2)(b) that he was going to frisk him or said that he

was under arrest. § 87(2)(b) was startled, and he said, “Am I being apprehended?” No officer answered § 87(2)(b) § 87(2)(b) then pushed PO Garcia’s hand away from his body. Immediately after this, PO Gutierrez pepper sprayed § 87(2)(b) No officer said anything to warn § 87(2)(b) before he was pepper sprayed. No officer tried to grab § 87(2)(b) § 87(2)(b) s hands before he was pepper sprayed (Board Review 1).

§ 87(2)(b) s medical records stated that § 87(2)(b) s chief complaint was pain to the hand in a cast. He requested that his eyes be flushed because he was pepper sprayed. The records noted that § 87(2)(b) was verbally aggressive and abusive, and refused medical treatment (Privileged Documents 1).

PO Garcia explained that with theft of service, he often gives the alleged perpetrator an opportunity to explain his or her side of the story, because theft of service is often just a misunderstanding between two parties. He also usually gives the alleged perpetrator an opportunity to pay the vendor, instead of arresting the perpetrator immediately. Although § 87(2)(b) § 87(2)(b) was considered under arrest because the officers had probable cause to arrest him, PO Garcia’s intention was not to arrest § 87(2)(b) right away—he wanted to give him the opportunity to rectify the situation. The officers asked § 87(2)(b) what had occurred, and § 87(2)(b) provided some sort of explanation of why he did not pay the taxi fare. PO Garcia decided at that point to frisk § 87(2)(b) for his own safety, to ensure § 87(2)(b) did not have any weapons on him. Usually, when PO Garcia stops an individual, he “always wants to see hands, to make sure that they don’t have anything on them—especially in a neighborhood like the South Bronx.” § 87(2)(b) who had a cast on one hand, was not doing anything with his hands before PO Garcia frisked him. PO Garcia chose to frisk § 87(2)(b) at that particular moment because it was early on in the incident, and he wanted to ensure that he was not armed. Nothing in particular made PO Garcia decide to frisk § 87(2)(b) it was simply procedure. Nothing about § 87(2)(b) made PO Garcia fear for his safety, and he did not see any bulges on § 87(2)(b)

Initially, PO Garcia stated that he could not recall if he said anything to § 87(2)(b) before he frisked him; he then said that he said something to the effect of, “Can I pat you down?” § 87(2)(b) said something to the effect of, “Oh, you’re not supposed to touch me.” PO Garcia thought that one-to-two seconds elapsed between when he asked, “Can I pat you down?” and when he first touched § 87(2)(b) § 87(2)(b) had been outside of the club for one minute before PO Garcia patted down § 87(2)(b) around his waistband.

As PO Garcia frisked § 87(2)(b) § 87(2)(b) took a step away from PO Garcia. PO Garcia could not recall how much of his waistband he had frisked before § 87(2)(b) stepped away. § 87(2)(b) began to curse at the officers and told them that they couldn’t touch him, which PO Garcia interpreted as combative. PO Garcia stated, “At that point, there is no more negotiation—I have probable cause to arrest.” PO Garcia explained that § 87(2)(b) was under arrest both because of not paying the taxi driver and because he was “unwilling to talk.” PO Garcia was “trying to do a safety procedure that [he] always did, and § 87(2)(b) did not comply... With my safety, I don’t play around. I apprehended him so that I could be safe.” PO Garcia stated that § 87(2)(b) was pepper sprayed after he was taken to the ground and continued to struggle, and was never pepper sprayed while he was standing (Board Review 6).

PO Gutierrez stated that § 87(2)(b) was considered under arrest from the moment the officers arrived because they were acting on information that the taxi driver had provided to them. However, the officers did not immediately place § 87(2)(b) in handcuffs because they first wanted to hear § 87(2)(b) s side of the story. However, before § 87(2)(b) could

explain what happened, PO Garcia immediately frisked § 87(2)(b) PO Garcia might have asked § 87(2)(b) if he had any weapons on him, but PO Gutierrez was not certain. PO Gutierrez explained that the officers always frisk individuals who were arrested out of concern for the officers' safety. There was no other reason why § 87(2)(b) was frisked. When PO Garcia frisked § 87(2)(b) around the waistband, § 87(2)(b) pushed PO Garcia's hands away from him. § 87(2)(b) said, "What are you doing? Why are you searching me?" PO Garcia had only frisked the front of § 87(2)(b)'s waistband and was just getting to the side of his waistband when § 87(2)(b) pushed him away. PO Garcia told § 87(2)(b) to place his hands behind his back, and § 87(2)(b) did not do this. § 87(2)(b) was told once to place his hands behind his back, and no other commands were given. PO Gutierrez wanted § 87(2)(b) to comply with the officers and immediately pepper-sprayed § 87(2)(b) from about one foot away. PO Gutierrez chose to use pepper spray because it was "the minimal amount of force." PO Gutierrez had not touched § 87(2)(b) before he pepper sprayed him (Board Review 5).

§ 87(2)(b)'s arrest report, which was prepared by PO Gutierrez, stated: § 87(2)(a) 160.50  
§ 87(2)(b) (Board Review 16). The Criminal Court Complaint, in which PO Gutierrez was deposed, stated that "§ 87(2)(a) 160.50  
§ 87(2)(b)  
§ 87(2)(b) (Board Review 18).

PO Rodriguez stated that when § 87(2)(b) told the officers that the taxi driver had overcharged him, PO Garcia asked § 87(2)(b) to take his hands out of his pockets, and § 87(2)(b) did not comply. PO Rodriguez first stated that PO Garcia did not say anything to § 87(2)(b) before he frisked him, but then stated that PO Garcia told § 87(2)(b) he was going to frisk him, because officers always say this to individuals before they frisk them. § 87(2)(b) wiggled his body. PO Rodriguez could not recall the details of what § 87(2)(b) did. PO Gutierrez then pepper sprayed § 87(2)(b) PO Rodriguez then stated that PO Garcia and PO Gutierrez had been trying to place § 87(2)(b) in hand cuffs before PO Gutierrez pepper sprayed him, but she could not recall how long they were trying to handcuff him before he was pepper sprayed. She could not estimate if it was seconds or minutes (Board Review 7).

PO Moore stated that when § 87(2)(b) was speaking "very angrily," and was shouting and moving his hands. When § 87(2)(b) pushed PO Garcia's hand away from his waistband, § 87(2)(b) said, "Why are you frisking me? Am I being arrested? You don't need to frisk me!" PO Garcia responded, "No, you're not being arrested; I just want to frisk you for our safety. PO Moore did not recall if PO Garcia ever came into contact with § 87(2)(b) before he pushed PO Garcia's hands away. PO Gutierrez told § 87(2)(b) that he needed to pay the taxi fare, or he was going to be arrested for theft of service. When § 87(2)(b) refused, PO Garcia and PO Gutierrez told § 87(2)(b) to put his hands behind his back. PO Garcia was trying to place one of § 87(2)(b)'s hands behind his back, and § 87(2)(b) was refusing to place his hand behind his back. PO Moore could not provide more specific testimony about what § 87(2)(b) was doing with his body. PO Gutierrez was trying to assist PO Garcia handcuffing § 87(2)(b) PO Moore thought that PO Gutierrez was trying to bring his other hand behind his back. PO Moore did not know what happened next because she turned away to deal with a crowd that was forming. She did not see PO Gutierrez pepper spray § 87(2)(b) or see how he went to the ground (Board Review 8).

PO Gutierrez, PO Garcia, PO Rodriguez, and PO Moore had the same memo book entry: “Male stop refused to be frisked. Highly aggressive male had to be maced to be apprehended (Board Reviews 19-22). The AIDED report stated, “Suspect was maced and taken to § 87(2)(b) [REDACTED] Suspect RMA in hospital. Suspect has a broken wrist playing basketball” (Board Review 17).

An officer may only frisk an individual if he reasonably suspects that the individual is armed and dangerous People v. De Bour 40 N.Y.2d 210 (1976) (Board Review 23). A search of an individual must be incident to an actual arrest; an officer’s possession of probable cause that could have led to an arrest, but did not, does not suffice People v. Reid 24 N.Y.3d 615 (2014) (Board Review 24). A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous People v. Carney 58 N.Y.2d 51 (1982) (Board Review 25).

Patrol Guide 212-95 states that pepper spray may be used in arrest situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. Pepper spray shall not be used in situations that do not require the use of physical force (Board Review 26).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C –Force: PO Christian Garcia used physical force against § 87(2)(b)**

**Allegation D –Force: PO Manuel Gutierrez used physical force against § 87(2)(b)**

**Allegation E –Force: An officer used a chokehold against § 87(2)(b)**

**Allegation F –Force: An officer restricted § 87(2)(b) s breathing.**

**Allegation G –Force: PO Christian Garcia restricted § 87(2)(b) s breathing.**

**Allegation H –Force: PO Manuel Gutierrez restricted § 87(2)(b) s breathing.**

§ 87(2)(b) stated that immediately after he was pepper sprayed, an officer twisted his arm behind his back, and § 87(2)(b) was brought to the ground. He thought that PO Garcia did this because it seemed like a strong individual was taking him to the ground, and PO Garcia was “aggressively strong” throughout the entire incident. § 87(2)(b) could not be certain it was PO Garcia because the pepper spray blinded him momentarily. § 87(2)(b) landed face-first on the ground. § 87(2)(b) stated that once he was on the ground, an officer placed a knee on the back of his neck, and § 87(2)(b) could not breathe. § 87(2)(b) attributed the restriction of his breathing to the knee on the back of his neck, and not the fact that he had been recently pepper sprayed. § 87(2)(b) could not see who was on top of him. § 87(2)(b) screamed that he could not breathe, that he was having an asthma attack, and that he needed Albuterol (the medication in his inhaler). An officer administered him his inhaler (again, he did not know which one because he could not see). The officers got off of his body. § 87(2)(b) estimated that the knee was on the back of his neck for approximately one minute. § 87(2)(b) stated that a small scar on the back of his neck was from this knee (Board Review 27 for photo). The officers had § 87(2)(b) s left arm behind him, and they were pulling on his right arm, trying to take it out of the sling and bring it behind his back, but § 87(2)(b) s arm would not come out of the sling. § 87(2)(b) tried to explain to the officers that his arm had been dislocated. § 87(2)(b) did not resist arrest in any way and never moved his hands up in the air or away from the officers. One handcuff was placed on his left arm, and he was then carried to the police car. § 87(2)(b) yelled to § 87(2)(b) whose voice he had heard, to record the incident. As he was yelling, officers punched him in the back two times. He did not know which officers were doing this because he was still blind from the pepper spray. Officers kned him in the back of his legs. § 87(2)(b) was not trying to resist—he could not see where the door or the seat were. He eventually entered the vehicle himself. The officers did not seat him in the patrol car, but instead laid him across the back seat, stomach-down (Board Review 1).

§ 87(2)(b) s medical records stated that § 87(2)(b) s chief complaint was the pain to his hand. § 87(2)(b) told medical personnel that when he was being arrested, he hit his previously injured hand, and was concerned that the soft cast was not holding his hand in the correct position. § 87(2)(b) requested a CAT scan, but then refused all medical treatment, and left the hospital with the police (Privileged Documents 1).

§ 87(2)(b) said in her phone statement that when she exited Club Miami, she saw approximately six uniformed officers on top of § 87(2)(b). One officer had a knee on § 87(2)(b) s right arm, which was in a cast. Another knee was on § 87(2)(b) s left arm, a third knee was on his back, and a fourth knee was on his shoulder. § 87(2)(b) said in her phone statement that when § 87(2)(b) was being placed into the police vehicle, he tried to say something to § 87(2)(b) and one of the officers punched § 87(2)(b) in the side. § 87(2)(b) was placed into the back seat of the vehicle with his stomach-down (Board Review 2).

§ 87(2)(b) also said that an officer's knee was on § 87(2)(b)'s back or shoulder. The officers were trying to handcuff him, but § 87(2)(b) had one arm in a cast, so it was impossible for them to handcuff him normally. § 87(2)(b) was screaming that he could not see and that he could not bend his arm. The officers told § 87(2)(b) to get inside of the vehicle, and § 87(2)(b) replied that he could not because of the way they had handcuffed his arm. An officer picked up his legs and placed him inside of the vehicle legs-first. Another officer pulled on § 87(2)(b)'s legs from the other side of the vehicle and dragged him across the seat. The officers then closed the door and drove him to the station house (Board Review 3).

PO Garcia grabbed § 87(2)(b)'s torso or shoulder in an attempt to handcuff him. PO Garcia could not handcuff § 87(2)(b) while he was standing because he was "flailing his arms, moving around, and trying to push" the officers. PO Gutierrez also touched § 87(2)(b) but PO Garcia did not recall where. Initially, PO Garcia stated that § 87(2)(b) began to resist arrest by moving his arms, refusing to turn around, and pushing PO Garcia with his arms. After PO Garcia was reminded in his interview that § 87(2)(b) was in a cast, he stated that § 87(2)(b) was moving his free arm around, preventing the officers from grabbing it. PO Garcia estimated that he was struggling with § 87(2)(b) for approximately one minute before he was taken to the ground. PO Garcia and PO Gutierrez pulled § 87(2)(b) and he went to the ground quickly; they did not have to use any other tactic.

Once § 87(2)(b) was on the ground, he continued moving his body and refusing to place his hand behind his back. Approximately three to four minutes after § 87(2)(b) went to the ground, PO Gutierrez pepper sprayed him. During those three to four minutes, PO Gutierrez and PO Garcia were trying to handcuff § 87(2)(b)'s free hand to his belt. § 87(2)(b) was never successfully handcuffed. § 87(2)(b) was on the ground for five or six minutes, and besides trying to handcuff § 87(2)(b) the officers did not do anything else. PO Garcia did not recall if he ever placed a knee on § 87(2)(b)'s back, neck, or arm in a cast. He did not recall if he ever saw another officer do any of these things. PO Garcia did not recall hearing § 87(2)(b) say that he could not breathe, and he did not recall him saying that he was having an asthma attack, or that he needed his inhaler.

They had difficulty placing § 87(2)(b) into the marked vehicle. PO Garcia did not recall if § 87(2)(b) was saying anything to the females outside of the club. PO Garcia never punched or kneed § 87(2)(b) and he did not see another officer do these things. PO Garcia estimated that it took him approximately one minute to place § 87(2)(b) inside of the vehicle; he did not recall officers kicking § 87(2)(b) to place him inside. § 87(2)(b) would not sit down, and had to be laid down across the back seat. PO Garcia did not recall how § 87(2)(b) was lying down, but PO Garcia never saw § 87(2)(b) on his stomach in the backseat (Board Review 6).

PO Gutierrez stated that § 87(2)(b) went to the ground of his own volition, once he was pepper-sprayed. No additional force was used to bring § 87(2)(b) to the ground. § 87(2)(b) landed face-down. Once § 87(2)(b) was on the ground, he was calm. PO Gutierrez grabbed § 87(2)(b)'s right arm and placed a handcuff on it because his left arm was in a cast. PO Gutierrez cuffed § 87(2)(b)'s right hand to his belt behind his back. PO Garcia assisted PO Gutierrez with the handcuffing, and no other officers assisted. There was no difficulty in handcuffing § 87(2)(b) as § 87(2)(b) was compliant once he was on the ground. § 87(2)(b) was shouting something, but PO Gutierrez did not recall what he was shouting. PO Gutierrez never touched § 87(2)(b)'s arm in the cast. PO Gutierrez denied placing a knee on § 87(2)(b)'s back, neck, or arm, and he never saw another officer do these



things. § 87(2)(b) stated that he could not breathe when he was on the ground, so PO Gutierrez and PO Garcia brought § 87(2)(b) to a standing position. PO Gutierrez attributed his restricted breathing to the pepper spray. PO Gutierrez did not think he administered asthma medication to § 87(2)(b) and he did not recall if § 87(2)(b) ever asked to use his inhaler. PO Gutierrez estimated that § 87(2)(b) was on the ground for three seconds—just long enough for PO Gutierrez and PO Garcia to handcuff him. PO Gutierrez requested an ambulance to meet them at the 40<sup>th</sup> Precinct station house because § 87(2)(b)'s friends exited the club around the time that he was handcuffed and started to yell at the officers. PO Gutierrez thought that the scene outside of the club was “too crazy,” so he decided that it would be better to have EMS come to the 40<sup>th</sup> Precinct station house, which is approximately four blocks away from Club Miami.

PO Gutierrez did not recall if there was any difficulty in placing § 87(2)(b) inside of the police vehicle. § 87(2)(b) was not yelling to the females, but he was complaining about his eyes burning. PO Gutierrez held § 87(2)(b) on the bicep of his arm that was not in a cast, while PO Garcia grabbed § 87(2)(b) underneath his armpit and led him toward the vehicle. PO Gutierrez placed § 87(2)(b) into the vehicle. PO Gutierrez thought that he placed § 87(2)(b) in a seated position, and that § 87(2)(b) then laid down on his side of his own volition. PO Gutierrez never punched § 87(2)(b) in the back. § 87(2)(b) was never placed face-down onto the back seat. PO Gutierrez never saw § 87(2)(b) on his stomach inside of the vehicle at any point (Board Review 5).

PO Rodriguez stated that immediately after § 87(2)(b) was pepper sprayed, § 87(2)(b) went to the ground because he was bending over in an attempt to clean his eyes. PO Rodriguez did not recall if he went to the ground on his own, or if officers used force to bring him to the ground. Once § 87(2)(b) was on the ground he was placed in handcuffs. PO Rodriguez did not recall who handcuffed § 87(2)(b) she did not have a clear view of § 87(2)(b)'s hands because PO Garcia and PO Gutierrez were around him. PO Rodriguez estimated that § 87(2)(b) was on the ground for approximately three minutes; during those three minutes, the officers were trying to handcuff him. The officers were having difficulty handcuffing § 87(2)(b) because he was wiggling his body. She never saw an officer place a knee on the back of § 87(2)(b)'s neck or arm. She never heard § 87(2)(b) say that he could not breathe or that he had asthma. PO Garcia and PO Gutierrez lifted § 87(2)(b) and walked him to a marked police vehicle. PO Rodriguez never saw officers punch or knee § 87(2)(b) to get him inside of the vehicle. PO Rodriguez did not see how § 87(2)(b) was placed inside of the vehicle because she was walking to another marked police vehicle that was approximately three car lengths away from the vehicle that transported § 87(2)(b). She did not see § 87(2)(b) inside of the vehicle, and she never saw him lying on his stomach in the back seat (Board Review 7).

PO Moore stated that she was controlling the crowd outside of the club and was not focusing on § 87(2)(b). When she did look at § 87(2)(b) he was on the ground, and PO Garcia and PO Gutierrez each had one of his hands, and were trying to place him in handcuffs. She never saw an officer with a knee on the back of § 87(2)(b)'s neck, side, or arm that was in a cast. § 87(2)(b) never said that he could not breathe or that he had asthma. Either PO Garcia or PO Gutierrez was trying to place him inside of the vehicle; she was not certain which one. § 87(2)(b) kept trying to stand up instead of sit down and enter the police vehicle. § 87(2)(b) repeatedly stated that he was not going to the station house. § 87(2)(b) entered the vehicle after one of his female friends told § 87(2)(b) to “just go.” PO Moore did not

[illegible]

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date